

EXHIBIT 1

(NOTE TRAILING PAGES OMITTED FOR LACK OF RELEVANCE)

Bernstein, Max A.

From: Bernstein, Max A.
Sent: Thursday, January 7, 2021 6:40 PM
To: 'Burkett McInturff'; Reddy, Aarti
Cc: Jessica L. Hunter; Low, Charlie; Duncan, Kevin P; Schattner, Ian; Gutkin, Jeff; Steven Wittels; Tiasha Palikovic; Steven D. Cohen; Smith, Tryphena; Rhodes, Michael; Steven D. Cohen
Subject: RE: Revised ESI Protocol

Burkett,

We don't follow your explanation for not sharing your positions with us. We sent you a draft joint filing yesterday, and that was the last email on this issue. My email yesterday said:

Please find attached our draft positions for the **joint letter**. We are sharing this with you at the time we proposed for a mutual exchange, **sufficiently in advance of the filing deadline**, even though you are refusing us this basic courtesy.

Given that we sent you a draft of a joint letter just yesterday, we obviously were planning for a joint filing today. As for my email from earlier this week that you attached, I explained that if you don't share your positions with us sufficiently in advance, and we have to respond substantively, we will have to do so in a further filing the following day—not that we were forgoing a joint filing today.

We understand you to be saying you are not going to share your positions with us tonight. We intend to follow the court's order on deadlines, so will go ahead file our positions by themselves. We are pretty frustrated by these games and think we have to note the history that lead to a unilateral filing for the Court.

Thanks,
Max

From: Burkett McInturff <jbm@wittelslaw.com>
Sent: Thursday, January 7, 2021 2:20 PM
To: Reddy, Aarti <areddy@cooley.com>; Bernstein, Max A. <mbernstein@cooley.com>
Cc: Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>; Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdcc@wittelslaw.com>; Smith, Tryphena <tsmith@cooley.com>; Rhodes, Michael <RHODESMG@cooley.com>; Steven D. Cohen <sdcc@wittelslaw.com>
Subject: RE: Revised ESI Protocol

[External]

Aarti,

Per the attached email from Max we have been operating based on his statement that Defendants are refusing to comply with Judge Parker's joint discovery letter order and intend to file their own letter after Plaintiffs file their letter. At this point if Noom wants to file a joint letter we will need to do it tomorrow, as we expect to be working on Plaintiffs letter until late tonight. For what it is worth, I think Judge Parker would prefer a joint letter and would be receptive to a brief joint letter motion today from the parties requesting a one-day extension due to a dispute that was recently resolved. Otherwise, we are going to continue operating based on your co-counsel's statement.

Feel free to call me if you would like to discuss.

Thanks,

Burkett

J. Burkett McInturff

WMP | Partner

18 Half Mile Road | Armonk, NY 10504

Phone: [910 476 7253](tel:9104767253) | Fax: [914 273 2563](tel:9142732563)



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From: Reddy, Aarti <areddy@cooley.com>

Sent: Thursday, January 7, 2021 5:08 PM

To: Bernstein, Max A. <mbernstein@cooley.com>

Cc: Burkett McInturff <jbm@wittelslaw.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <clow@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>; Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdco@wittelslaw.com>; Smith, Tryphena <tsmith@cooley.com>

Subject: Re: Revised ESI Protocol

Burkett,

It is now after 5:00 pm and we are not yet in receipt of Plaintiffs' proposed position statement, due this evening. Can you please advise as to when we will receive it?

Thank you,

Aarti

On Jan 6, 2021, at 10:16 AM, Bernstein, Max A. <mbernstein@cooley.com> wrote:

Hi Burkett,

Please find attached our draft positions for the joint letter. We are sharing this with you at the time we proposed for a mutual exchange, sufficiently in advance of the filing deadline, even though you are refusing us this basic courtesy.

Thanks,

Max

From: Bernstein, Max A.

Sent: Tuesday, January 5, 2021 6:06 PM

To: Burkett McInturff <jbm@wittelslaw.com>; Reddy, Aarti <areddy@cooley.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>; Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdcc@wittelslaw.com>; Smith, Tryphena <tsmith@cooley.com>

Subject: RE: Revised ESI Protocol

Hi Burkett,

Thanks for the response. We will follow the plan we set out in our last email. We don't agree that asking for notice of the issues you intend to raise is contrary to SDNY rules of practice and note you do not cite any rule for that position. Nor do we agree that Defendants have improperly serially revised their position statement (the time stamps in this thread show it was Plaintiffs that revised their positions up until the last minute before the deadline).

We think the issue here is pretty simple. We don't know what you intend to include in these joint filings until we get your draft. It is just not reasonable to expect us to meaningfully respond in the hours before the document is due to the court and to force both parties and their admins to stay up until midnight for no reason. Sadly, it sounds like even this is an issue we cannot work out amongst ourselves, so we will have to involve Judge Parker.

Thanks,
Max

From: Burkett McInturff <jbm@wittelslaw.com>

Sent: Tuesday, January 5, 2021 5:31 PM

To: Bernstein, Max A. <mbernstein@cooley.com>; Reddy, Aarti <areddy@cooley.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>; Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdcc@wittelslaw.com>; Smith, Tryphena <tsmith@cooley.com>

Subject: RE: Revised ESI Protocol

[External]

Max,

We are not able to comply with the demand you raised for the first time yesterday that we give you two full days to review and respond to our portion of the joint discovery letter for Judge Parker. You are also wrong to claim that because Ms. Reddy "raised this issue last month," your demand yesterday "shouldn't come as a surprise" to Plaintiffs. The very December 7 email from Ms. Reddy you reference simply requested that the parties "reach an agreement that any final substantive edits to joint letters need to be exchanged by 10:30 pm EST" on the day of the filing. The request you made yesterday is certainly a surprise. We are tied up today and tomorrow with other assignments and do not expect to begin working on our portion of the letter until Thursday morning. In any event we also do not believe Defendants' practice of serially revising their position statement in the parties' joint status letters is consistent with SDNY practice or what Judge Parker envisioned when she requested letters outlining the agenda for the discovery conferences. As previously discussed with you and Ms. Reddy we also do not

believe your serial changes to Defendants' portions of the letter accurately reflect the record or are conducive to the Court's resolution of the parties' disputes.

Please let us know if you intend to comply with Judge Parker's joint letter order. If you confirm you will abide by the Court's order, we anticipate sending you our version of the joint letter on Thursday afternoon.

Finally, to the extent you intend to attach a copy of this email thread to your correspondence with Judge Parker, please be sure to include this email.

Thank you,

Burkett

J. Burkett McInturff

WMP | Partner

18 Half Mile Road | Armonk, NY 10504

Phone: [910 476 7253](tel:9104767253) | Fax: [914 273 2563](tel:9142732563)

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From: Bernstein, Max A. <mbernstein@cooley.com>

Sent: Monday, January 4, 2021 9:00 PM

To: Burkett McInturff <jbm@wittelslaw.com>; Reddy, Aarti <areddy@cooley.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>

Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Smith, Tryphena <tsmith@cooley.com>

Subject: RE: Revised ESI Protocol

Burkett,

It's not workable for Plaintiffs to send us unknown substantive arguments hours before a joint filing is due and expect us to be able to meaningfully respond in the same filing. Given that we raised this issue last month, it shouldn't come as a surprise to you. We don't understand the reasoning for your refusal of an earlier exchange other than that you hope to gain a tactical advantage.

If you do not agree to exchange drafts Wednesday morning, we will review your submission on Thursday and then file our response to that content as early as practicable the following day, along with a copy of this email thread and a request for an order that you stop engaging in this approach to joint filings.

Please let us know whether you will agree to the Wednesday morning exchange or not.

Thanks,
Max

From: Burkett McInturff <jbm@wittelslaw.com>
Sent: Monday, January 4, 2021 5:35 PM
To: Bernstein, Max A. <mbernstein@cooley.com>; Reddy, Aarti <areddy@cooley.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Smith, Tryphena <tsmith@cooley.com>
Subject: RE: Revised ESI Protocol

[External]

Max,

We agree that the letter is due Thursday but cannot commit to your proposed timing. You are welcome to send us your portion as soon as it is ready. We expect to send you our portion on Thursday afternoon.

Thanks,

Burkett

J. Burkett McInturff

WMP | Partner
18 Half Mile Road | Armonk, NY 10504
Phone: [910 476 7253](tel:9104767253) | Fax: [914 273 2563](tel:9142732563)

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From: Bernstein, Max A. <mbernstein@cooley.com>
Sent: Monday, January 4, 2021 8:29 PM
To: Reddy, Aarti <areddy@cooley.com>; Burkett McInturff <jbm@wittelslaw.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>; Smith, Tryphena <tsmith@cooley.com>
Subject: RE: Revised ESI Protocol

Burkett,

We understand our next joint letter to the Court is due Thursday. Can you confirm you agree with date? And can we agree to exchange drafts Wednesday morning to give the parties time to respond to substantive arguments and avoid a crunch Thursday? The last of these joint filings ended up being a

late-night, near-midnight filing (see below). For our own stress levels, and also to spare our respective staffs, we think agreeing to an exchange Wednesday makes sense.

Thanks and happy New Year,
Max

From: Reddy, Aarti <areddy@cooley.com>
Sent: Monday, December 7, 2020 9:00 PM
To: Burkett McInturff <jbm@wittelslaw.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Bernstein, Max A. <mbernstein@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdcc@wittelslaw.com>; Smith, Tryphena <tsmith@cooley.com>
Subject: RE: Revised ESI Protocol

Burkett,

We filed just in the nick of time, but out of respect for our respective administrative teams, let's please reach an agreement that any final substantive edits to joint letters need to be exchanged by 10:30 pm EST.

Please confirm. We're happy to set deadlines for mutual exchanges to avoid late-night filings in the future.

Thank you,
Aarti

Aarti Reddy
Cooley LLP
+1 415 693 2103 office

From: Reddy, Aarti
Sent: Monday, December 7, 2020 11:15 PM
To: 'Burkett McInturff' <jbm@wittelslaw.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Bernstein, Max A. <mbernstein@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdcc@wittelslaw.com>
Subject: RE: Revised ESI Protocol

Burkett,

We're not planning to file Exhibit E. Other than that, we have no substantive changes.

Regards,
Aarti

Aarti Reddy
Cooley LLP
+1 415 693 2103 office

From: Burkett McInturff <jbm@wittelslaw.com>
Sent: Monday, December 7, 2020 11:01 PM

To: Reddy, Aarti <areddy@cooley.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <clow@cooley.com>; Bernstein, Max A. <mbernstein@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>
Subject: RE: Revised ESI Protocol

[External]

Aarti,

Attached is our latest draft of the joint letter. Below are a few notes:

1. We slightly revised the intro paragraph because the version you sent us said it contained only the issues Noom seeks to raise.
2. Our section fits within the allotted space but we do not approve of your formatting choices for our section so we shortened our arguments and returned out section to the original formatting. Please do not make any further changes to our section of the letter.
3. The revised Ex. E you just sent us contains our clients' personal email addresses, which we hereby designate confidential pursuant to the parties' protective order. To avoid disclosure of these email addresses, we have attached two versions of Ex. E that protects this information from disclosure. You are welcome to use either version you choose but you do not have our permission to file any other version than the Ex. E versions attached to this email.
4. If you make any changes to your section of the letter other than minor copy edits, we need to see them before filing. If you are concerned about meeting the filing deadline you can either (i) let us know and we will put the letter on our letterhead and file it, or (2) you can file after 12:00 and we will not complain.
5. Finally, please let us know if you plan to make any changes, as we don't want to wait up unnecessarily if you are simply going proceed with filing.

Thanks,

Burkett

J. Burkett McInturff

WMP | Partner

18 Half Mile Road | Armonk, NY 10504

Phone: [910 476 7253](tel:9104767253) | Fax: [914 273 2563](tel:9142732563)

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From: Reddy, Aarti <areddy@cooley.com>
Sent: Monday, December 7, 2020 10:44 PM
To: Burkett McInturff <jbm@wittelslaw.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Bernstein, Max A. <mbernstein@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>
Subject: RE: Revised ESI Protocol

See attached. Please send the draft as soon as possible.

Thank you,
Aarti

Aarti Reddy
Cooley LLP
+1 415 693 2103 office

From: Burkett McInturff <jbm@wittelslaw.com>
Sent: Monday, December 7, 2020 10:39 PM
To: Reddy, Aarti <areddy@cooley.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Bernstein, Max A. <mbernstein@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Steven D. Cohen <sdc@wittelslaw.com>
Subject: RE: Revised ESI Protocol

[External]

Can you resend me the new Exhibit E or tell me the page of Exhibit E that Tiasha's email will be on? I need to cite to it.

J. Burkett McInturff

WMP | Partner
18 Half Mile Road | Armonk, NY 10504
Phone: [910 476 7253](tel:9104767253) | Fax: [914 273 2563](tel:9142732563)

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From: Reddy, Aarti <areddy@cooley.com>
Sent: Monday, December 7, 2020 10:37 PM
To: Burkett McInturff <jbm@wittelslaw.com>; Jessica L. Hunter <jlh@wittelslaw.com>; Low, Charlie <chlow@cooley.com>; Bernstein, Max A. <mbernstein@cooley.com>; Duncan, Kevin P <kduncan@cooley.com>; Schattner, Ian <ischattner@cooley.com>; Gutkin, Jeff <jgutkin@cooley.com>